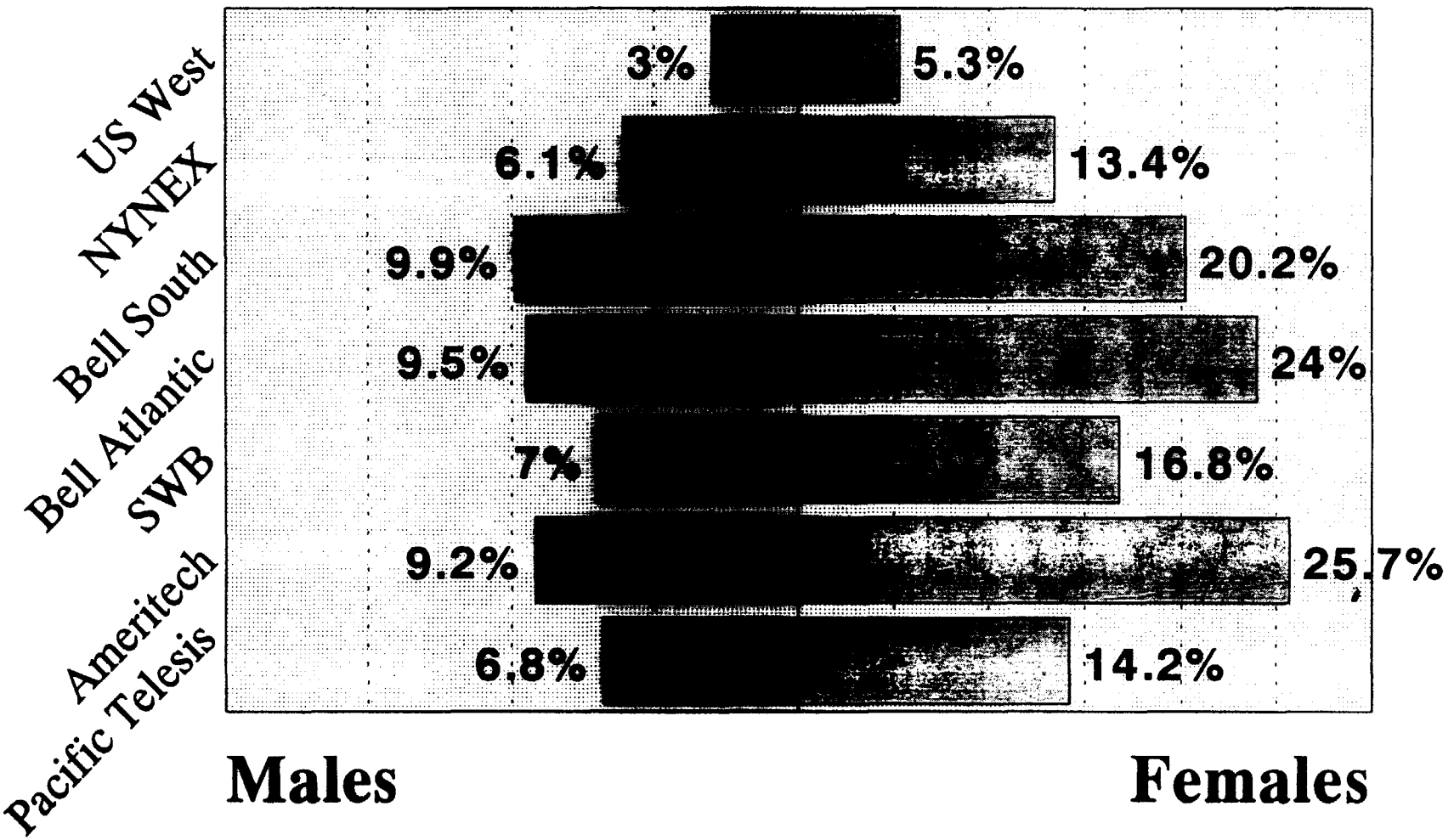
EXHIBIT VIII

# MANAGERS & OFFICIALS - '93
# -BLACKS-
## Percentage of Males and Females in this Job Category



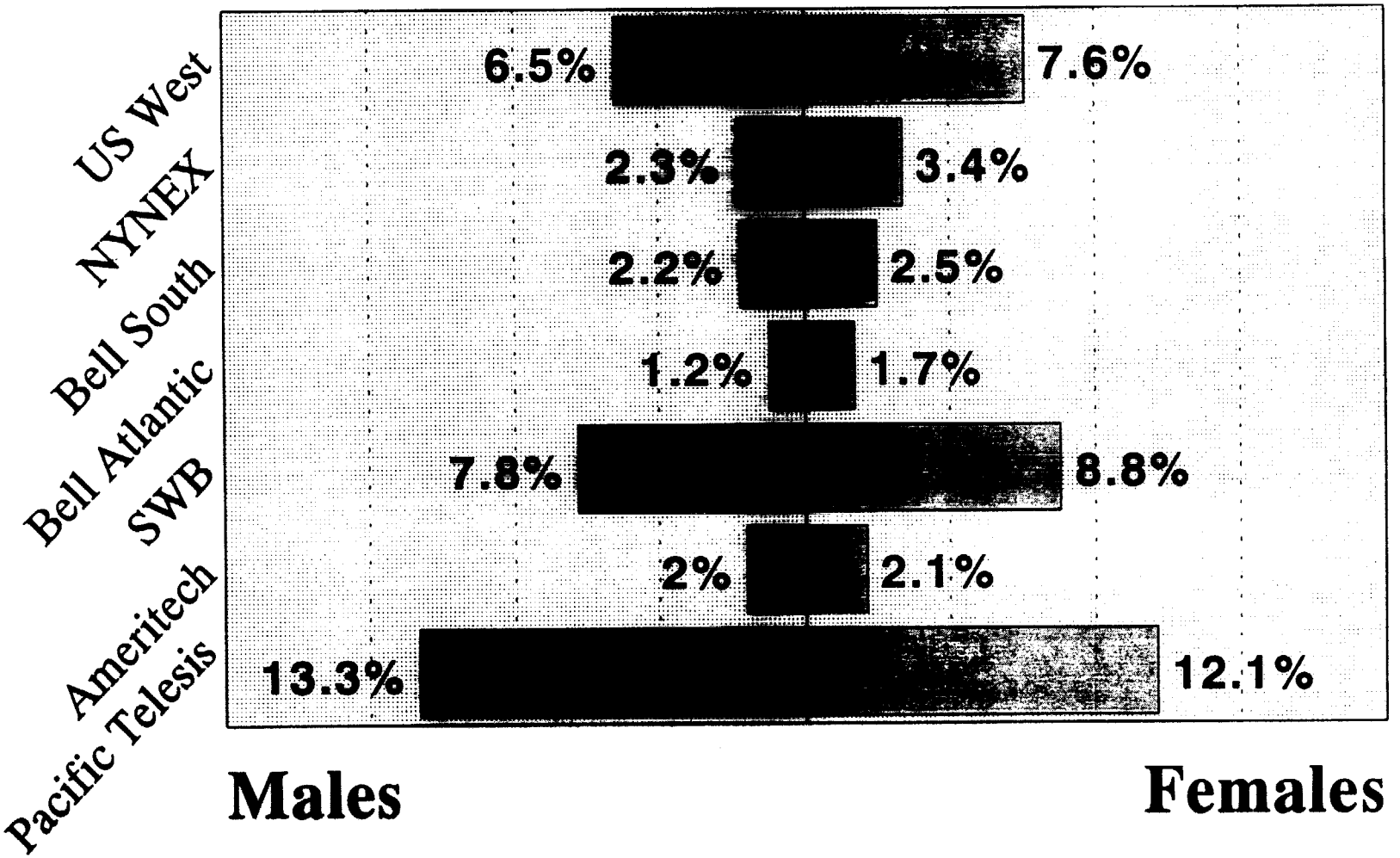

Data: FCC Annual Employment Reports

EXHIBIT IX

# MANAGERS & OFFICIALS - '93

## -HISPANICS-

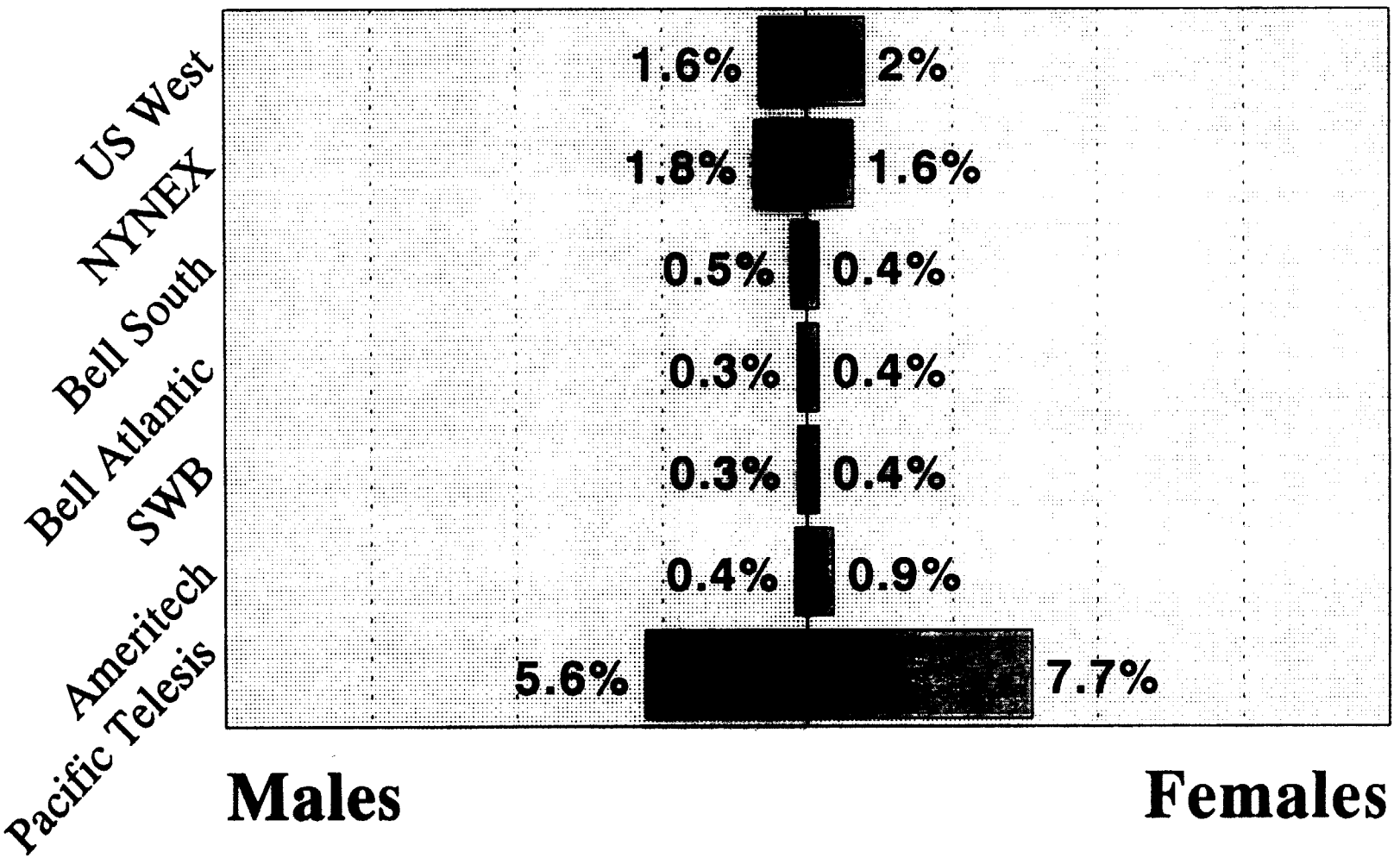
### Percentage of Males and Females in this Job Category




Data: FCC Annual Employment Reports

EXHIBIT X

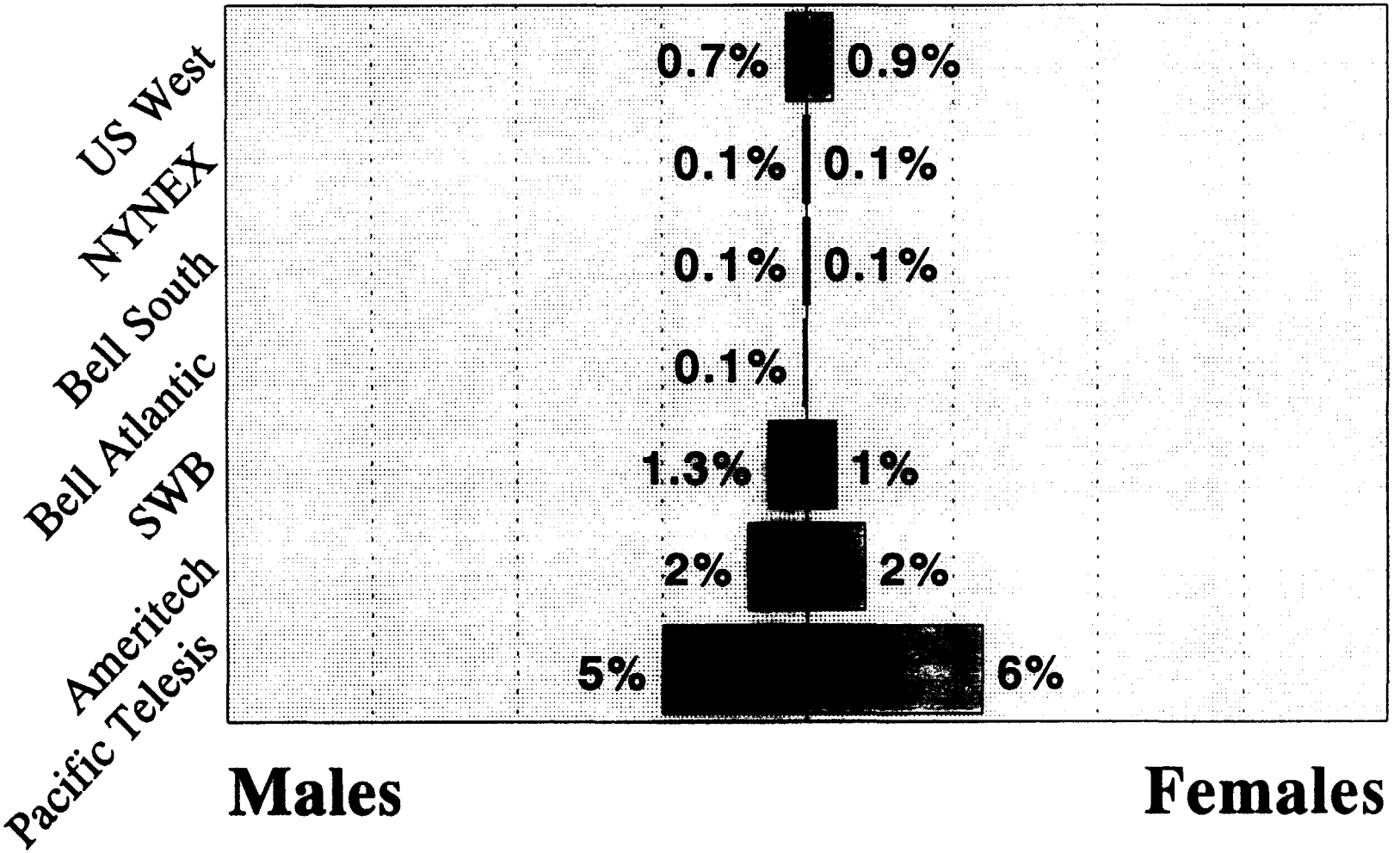
# MANAGERS & OFFICIALS - '93
# -ASIAN and PACIFIC ISLANDERS-
## Percentage of Males and Females in this Job Category




Data: FCC Annual Employment Reports

EXHIBIT XI

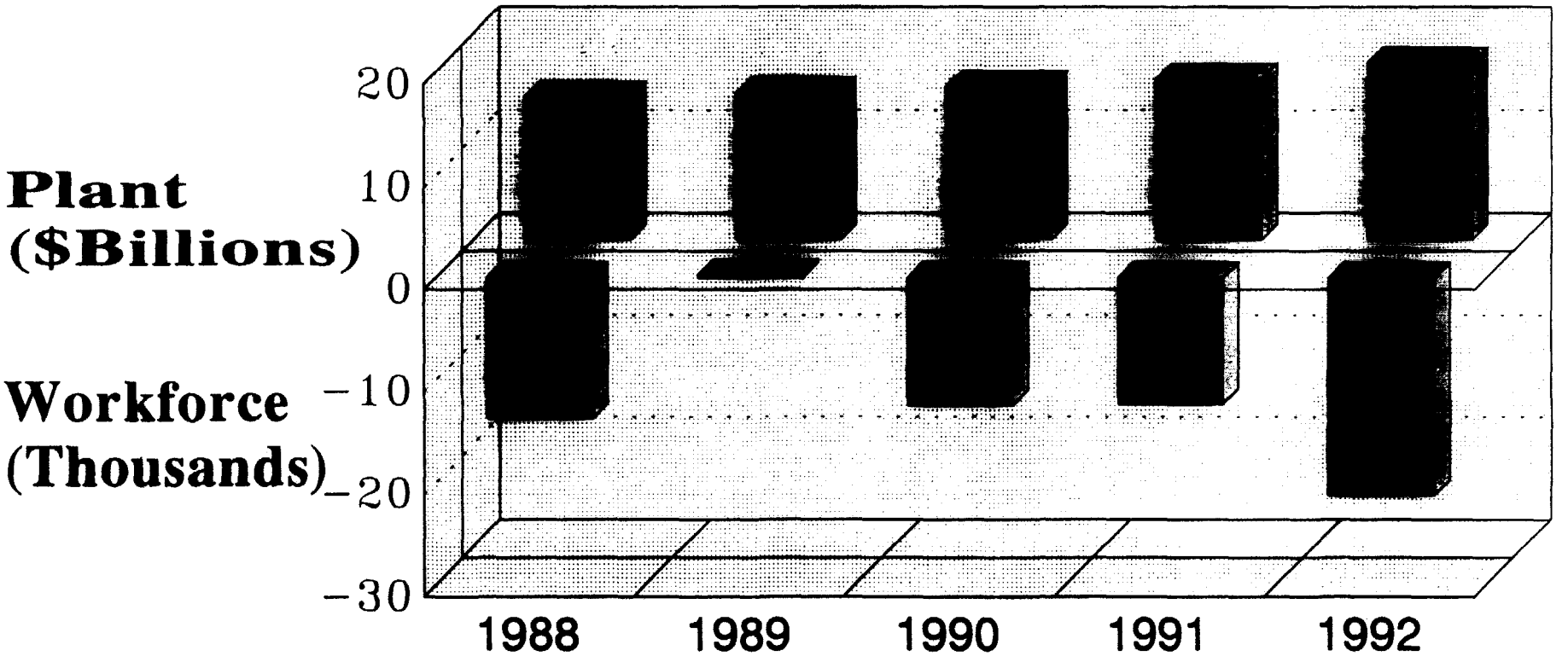
# MANAGERS & OFFICIALS - '93
# -AMERICAN INDIANS & ALASKANS-
## Percentage of Males and Females in this Job Category




Data: FCC Annual Employment Reports

EXHIBIT XII

# ADDITIONS TO PLANT
## vs
# DOWNSIZING OF WORKFORCE



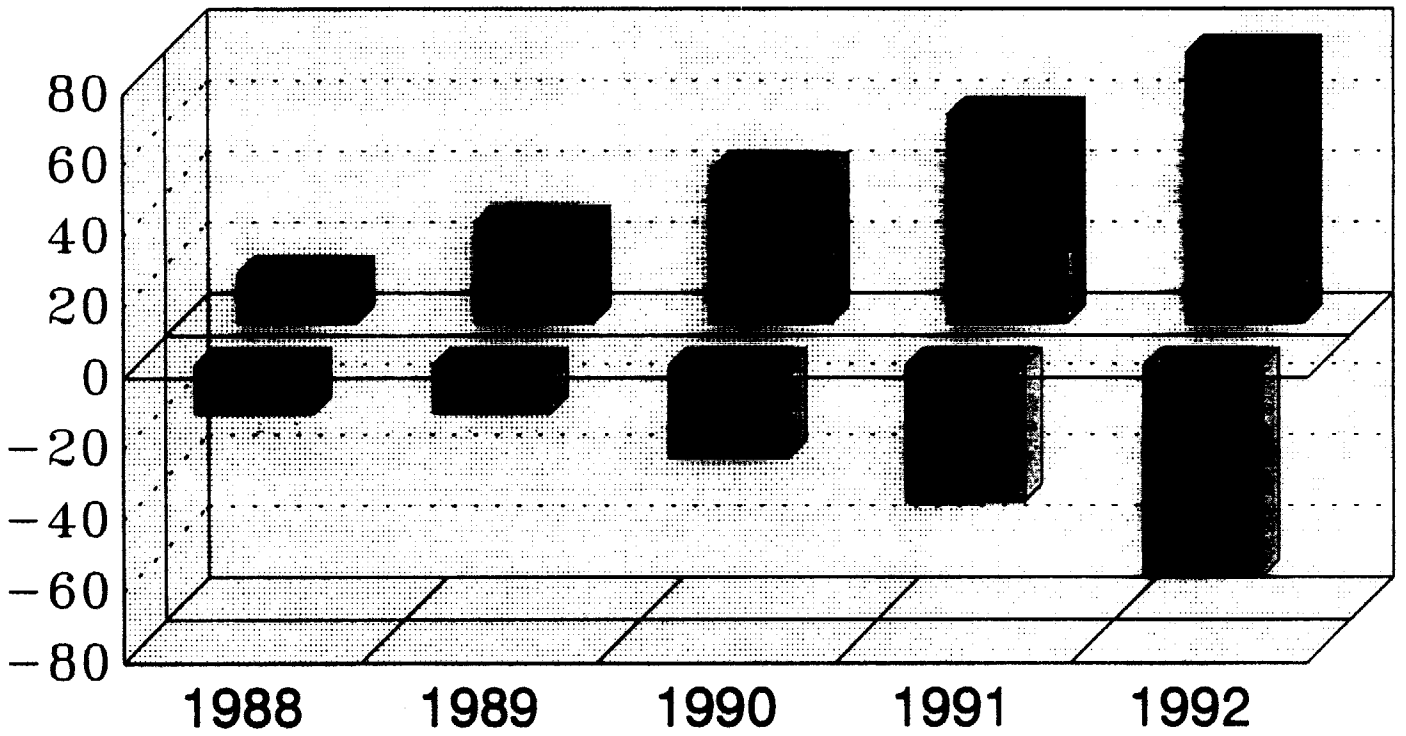

| | | | | | |
|---|---|---|---|---|---|
| PLANT | 13.896 | 14.313 | 14.899 | 15.659 | 17.226 |
| WORKFORCE | -13.809 | 0.286 | -12.485 | -12.365 | -21.24 |

Data: Federal Communications Commission

EXHIBIT XIII

# ADDITIONS TO PLANT vs DOWNSIZING OF WORKFORCE

## *CUMULATIVE ANALYSIS*




| | | | | | |
|---|---|---|---|---|---|
| PLANT | 13.896 | 28.209 | 43.108 | 58.767 | 75.993 |
| WORKFORCE | -13.809 | -13.523 | -26.008 | -38.373 | -59.613 |

Data: Federal Communications Commission

EXHIBIT XIV

Chart 18

## PERCENTAGE CHANGE OF MINORITY EMPLOYMENT IN BROADCAST INDUSTRY BEFORE AND AFTER FINANCIAL FORFEITURES

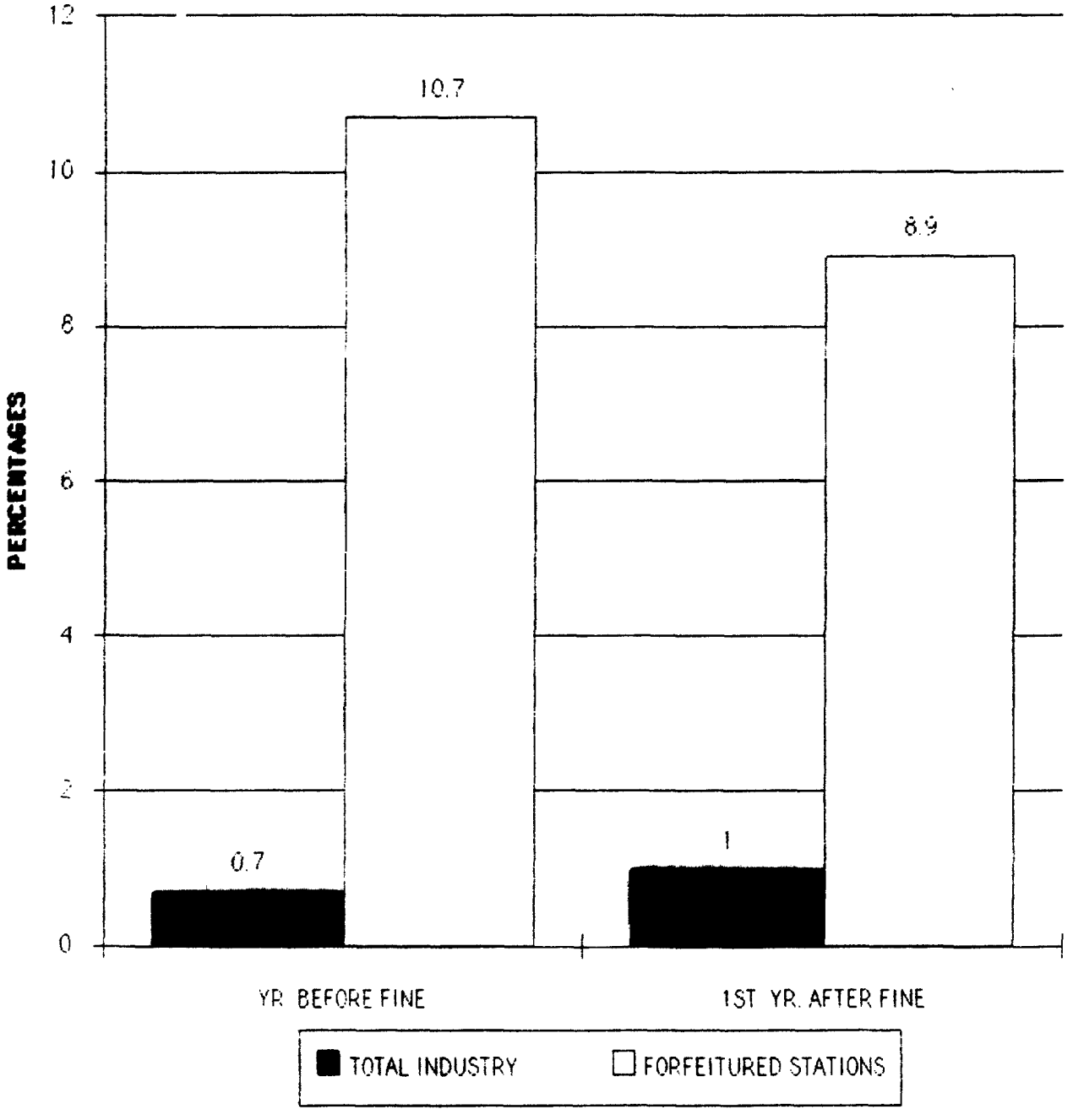


EXHIBIT XV

FORFITURES WKS

## BROADCAST FINANCIAL FORFEITURE STATIONS

| | | TOTAL EMPLOYS | PERCENT TOTAL | TOTAL FEMALES | PERCENT FEMALES | TOTAL MINORITIES | PERCENT MINORITIES |
|---|---|---|---|---|---|---|---|
| 1 YEAR BEFORE | TOTAL EMPLOYEES | 1033 | 100 | 409 | 39.6 | 40 | 3.9 |
| 1 YEAR AFTER | TOTAL EMPLOYEES | 997 | 100 | 385 | 38.6 | 146 | 14.6 |
| 2 YEAR AFTER | TOTAL EMPLOYEES | 532 | 100 | 192 | 36.1 | 70 | 13.2 |
| 1 YEAR BEFORE | FULL TIME HIGHER PAY | 664 | 100 | 224 | 33.7 | 12 | 1.8 |
| 1 YEAR AFTER | FULL TIME HIGHER PAY | 662 | 100 | 243 | 36.7 | 71 | 10.7 |
| 2 YEAR AFTER | FULL TIME HIGHER PAY | 340 | 100 | 124 | 36.5 | 37 | 10.9 |

# APPENDIX

**APPENDIX**

The Federal Communications Commission is the only federal administrative agency which requires its licensees and franchisees to practice affirmative action. This unique policy, developed in 1969, applies to radio and television and community antenna relay service (CARS) license renewal, transfer and assignment applications.

Widespread race discrimination by radio and television stations in Florida -- and a 1966 complaint by the Florida State Conference of the NAACP -- first motivated the Commission to make nondiscrimination a condition of FCC licensing. In 1967, the Office of Communication of the United Church of Christ and other UCC bodies petitioned the Commission to adopt what became its EEO Rule. Thirty five organizations filed supportive comments. Only one, the National Association of Broadcasters (NAB), opposed the petition. Commissioners Cox and Johnson formally proposed an EEO enforcement program in Florida Renewals, 7 FCC2d 122 (1967).

Until about the middle 1970's, the Commission openly tolerated and ratified discriminatory actions by its licensees. It routinely provided broadcast licenses to colleges and universities which were totally segregated (e.g., WBKY-FM, University of Kentucky, licensed in 1941; WUNC-FM, University of North Carolina, licensed in 1952; KUT-FM, University of Texas, licensed in 1957, among many others). In this way, the Commission endorsed and facilitated segregated broadcast education, thereby giving Whites a substantial headstart in access to broadcast employment.

Southland Television Co., 10 RR 699 (decided 1955, reported 1957), recon denied, 20 FCC 159 (1955) illustrates the Commission's racial policies at mid-century. The Commission had before it a Shreveport TV station applicant who owned segregated movie theatres. This man had built his movie theatres without balconies to circumvent a Louisiana law which allowing the admission of Blacks as long as they sat in the balconies. He even owned a segregated drive-in theater; all the other drive-ins were integrated (at least as to admission, although not as to the occupants of the automobiles). The Commission held that it lacked evidence that "any Louisiana theatres admit Negroes to the first floor" of theatres, nor any evidence that "such admission would be legal under the laws of that state." Id., 10 RR2d at 750. Thus did the Commission give full faith and credit to state segregation laws and to broadcasters' deliberate efforts to evade even the weakest state laws permitting some integration.

When faced with broadcast cases arising out of the civil rights movement, the FCC's decisions reflected the timidity and insensitivity of the national administration. In Broward County Broadcasting, 1 RR2d 294, 296 (1963), the Commission set for hearing the license of a small Florida station which proposed to address a small portion of its programming to the Black community. The reason: local White citizens had complained that the station was licensed to an all-White town which didn't need that type of music. When the station dropped the programming, the Commission quietly dropped the charges.

Two years later, in The Columbus Broadcasting Company,

Inc., 40 FCC 641 (1965), the Commission was faced with a radio licensee who had used his station to help incite the riot which took place at the University of Mississippi when James Meredith attempted to enroll. The Commission merely admonished the station.

The federal courts soon became impatient with the FCC's racist policies. In the landmark case of Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) ("UCC I") the Court of Appeals ordered the Commission to hold a hearing on the license renewal of a Jackson, Mississippi station, WLBT-TV, which only broadcast the White Citizens Council/Ku Klux Klan viewpoint on racial matters, and which went so far as to censor its own NBC network news feeds with a "Sorry, Cable Trouble" sign when NAACP General Counsel Thurgood Marshall was being interviewed. This case was highly significant because it upheld, for the first time, the principle that individual citizens, because of their investment in television and radio receivers, have standing to challenge television and radio licenses.

After a very one-sided hearing in which the Commission renewed WLBT-TV's license again, the Court ordered the Commission to deny the license renewal. The Court has never before or since taken such an action, but this time it held the administrative record to be "beyond repair." Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543 (D.C. Cir. 1969) ("UCC II").

The FCC's new antidiscrimination policy was applied

haltingly and sporadically at first. In Chapman Television and Radio Co., 24 FCC2d 282 (1970), the Commission had before it an applicant for Birmingham, Alabama TV Channel 21. That applicant, a man who owned part of the stock in a Birmingham cemetery, had participated in the cemetery's decision to exclude Blacks. The cemetery's policy came to light when the cemetery turned away the body of a Black Vietnam war hero. Yet the Commission found "extenuating circumstances" in the applicant's claim that the cemetery would have been sued by White cemetery plot owners.[1] The Commission ordered a hearing only into why the applicant had covered the matter up, not into whether a practicing segregationist had the moral character to be a federal licensee. Even the cover-up allegations were thrown out by the Hearing Examiner, who held that "in today's climate it is not at all an oddity for political leadership to appear to buckle before irresponsible and only half true racism charges." Chapman Radio and Television Co., 21 RR2d 887, 895 (Examiner 1971).

Chapman was not an anachronism. Long before minorities owned or applied for broadcast licenses, the Commission openly discriminated on the basis of national origin. In 1938, in what would now be seen as a clear violation of the First Amendment, the Commission rejected the only applicant for a radio license, holding that "the need for equitable distribution of [radio] facilities throughout the country is too great to grant broadcast station licenses for the purpose of rendering service to such a

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[1] This was a classic red herring: twenty-two years earlier, the Supreme Court had ruled that restrictive covenants were unenforcable. Hurd v. Hodge, 334 U.S. 24 (1948).

limited group [of speakers of foreign languages] ... the emphasis placed by this applicant upon making available his facilities to restricted groups of the public does not indicate that the service of the proposed station would be in the public interest." Voice of Detroit, Inc., 6 FCC 363, 372-73 (1938). See also Chicago Broadcasting Ass'n., 3 FCC 277, 280 (1936), Voice of Brooklyn, 8 FCC 230, 248 (1940).

These pre-World War II cases may reflect a certain anti-Semitism (inasmuch as the programming was largely intended for Jewish immigrants who had fled Germany and Poland). It surely reflected a climate in which none but WASPs could hope for access to the airwaves.

The Kerner Report (1968) recognized the mass media's failure to foster interracial communications. The report charged racism in the media with helping cause the 1960s' civil disturbances. Most significant was the Report's findings of lack of sensitivity of the White press:

> The media report and write from the standpoint of a white man's world. The ills of the ghetto, the difficulties of life there, the Negro's burning sense of grievance, are seldom conveyed. Slights and indignities are part of the Negro's daily life, and many of them come from what he calls the "white press" - a press that repeatedly, if unconsciously, reflects the biases, the paternalism, the indifference of white America. This may be understandable, but it is not excusable in an institution that has the mission to inform the whole of our society.

Id. at 203.

Citing the Kerner findings, the Commission recognized a nexus between EEO and program service and held that discrimination in broadcasting is unlawful. Nondiscrimination in Broadcasting, 13

FCC2d 766 (1968) ("Nondiscrimination in Broad casting"). The Commission mailed Chapter 15 of Kerner Report to every broadcast licensee. In deciding that its own EEO rule was needed to regulate broadcasters, even though the EEOC has been created to enforce Title VII, the Commission cited with approval this statement by the Department of Justice:

> Because of the enormous impact which television and radio have upon American life, the employment practices of the broadcasting industry have an importance greater than that suggested by the number of its employees. The provision of equal opportunity in employment in that industry could therefore contribute significantly toward reducing and ending discrimination in other industries.

Nondiscrimination in Broadcasting, supra, 13 FCC2d at 771.

Statistics are less of a factor in FCC EEO litigation than they were in the early days of FCC EEO regulation. In 1987, the FCC announced that it will review the EEO performance of licensees, even though they might operate above the statistical processing criteria, if their EEO programs are deficient. Broadcast EEO, 2 FCC Rcd 3967, 3973-3974 ¶¶44-50 (1987) ("Broadcast EEO"). Thus, a broadcaster with a meaningful EEO program will usually receive a routine license renewal even if the program has been unsuccessful in producing minority employees. Yet there are limits to the Commission's willingness to look the other way when an EEO program produces no results. A broadcaster may fail to use minority organizations, schools and media to publicize job openings as long as its use of nonminority job referral sources produces minority job candidates. However, if an EEO program which does not propose minority recruitment sources is not successful, the license may be in

jeopardy. South Carolina Renewals, 5 FCC Rcd 1704, 1710 n. 8 (1990).

The heart of broadcast EEO enforcement at the Commission is the license renewal, transfer and assignment process. The information available to members of the public wishing to scrutinize an applicant's performance consists of its annual employment reports (Form 395) and the EEO Program associated with its license renewal, assignment or transfer application (Form 396).

Petitions to deny, filed pursuant to 47 CFR §73.3584, are initially reviewed by the EEO Branch of the FCC's Mass Media Bureau. If the staff cannot make an affirmative finding that a grant of the application would serve the public interest, it must refer the application to the full Commission. See 47 CFR §0.283. Thereupon, the Commission generally must set the application for hearing. See 47 U.S.C. §309.

Cable EEO rules were adopted as part of the Cable Communications Policy Act of 1984. Cable EEO, 102 FCC2d 562, 58 RR2d 1572 (1985). Those rules provide essentially the same substantive EEO requirements applicable to broadcasting, with some enhancements -- notably the requirement that cablecasters make efforts to transact business with minority and female entrepreneurs (47 CFR §76.75(e) (implementing 47 U.S.C. §554(d)(2)(E)) and EEO enforcement at headquarters units (see 47 CFR §76.71(c)). The Commission is to report to Congress this year on its implementation of additional EEO initiatives contained in the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), Pub. L. No. 102-385, 106 Stat. 1460 (1992).

Cable EEO enforcement is largely conducted without the public involvement characteristic of broadcast EEO enforcement. Complaints, similar to a petition to deny, may be filed against the renewal of CARS licenses or other auxiliary services used by cable companies. 47 CFR §76.7. Since the Cable EEO rules were adopted in 1985, there has been no reported case involving a public complaint. Only one one cable system has been sanctioned for an EEO violation. Adelphia Communications, 9 FCC Rcd 908 (1984). Only one cable MSO headquarters has been sanctioned. Prime Cable (NAL), 4 FCC Rcd 1696 (1989) and Prime Cable (Forfeiture Order), 5 FCC Rcd 4590 (1990) ("Prime").[2]

The years between 1981 and early 1994 witnessed an unprecedented backpedaling and abstention to regulate in mass media EEO. Twenty-five years after the adoption of the broadcast EEO Rule and 21 years after adoption of former 47 CFR §76.311, the original cable EEO Rule, extensive discrimination still goes uncorrected. Even repeated noncompliance with the rules is subject only to very minor sanctions or admonishments.

This is unfortunate because of the special place EEO has assumed, especially in broadcast regulation. While the Commission

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[2] In Prime, the Commission issued an $18,000 fine for three successive years of EEO noncompliance. Prime Cable has over 526,000 basic subscribers. Broadcasting/Cable Marketplace 1994, p. D-34. At market rates just for basic cable (approximately $25 per month), just 60 subscribers' one-year revenues would have been needed to pay the fine.

The fine in Adelphia was $121,500. The Adelphia system has 165,000 basic subscribers. Id., p. D-3. At market rates it would have needed just 405 subscribers' one-year revenues to pay this fine.

must protect media employees and job applicants victimized by discrimination, Commission EEO regulation should do more than simply duplicate Title VII protections and EEOC procedures. It should also insure that the diversity of programming services provided by the mass media will serve the public interest. NAACP v. FPC, 425 U.S. 662, 670 n. 7 (1976).

Since its last systematic look at broadcast EEO, the Commission has extensively deregulated in every other substantive area: postcard renewals, ascertainment and program content percentage standards, the Fairness Doctrine, five year TV and seven year radio renewals, the duopoly rule, the Top 50 Policy, the 7-7-7 and the 12-12-12 rule, the Mickey Leland (14-14-14) rule, most distress sales (for want of stations placed in hearing), most comparative hearings for new facilities, the AM clear channel eligibility criteria favoring minority ownership.

Every one of these unfortunate regulatory decisions either benefitted large broadcasters at the expense of small ones, benefitted nonminority broadcasters at the expense of minority broadcasters, benefitted incumbent licensees at the expense of newcomers, or benefitted the industry generally at the expense of the listeners and viewers.

After wholesale deregulation, the only remaining public interest protection -- indeed, the only remaining objective standard by which the Commission may make the affirmative public interest finding required for renewal, assignment and transfer applications by Section 309 of the Act -- is EEO compliance. EEO -- by default -- is not only the most important factor at renewal,

assignment and transfer time, it is virtually the only one. Indeed, the Commission's reliance on EEO and minority ownership to meet its obligation under Section 315 of the Communications Act to promote diversity has become so profound that the Commission generally invokes its EEO and minority ownership policies as a shield whenever it deregulates in another area.[3] Along with minority ownership, EEO

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[3] In Deregulation of Radio 73 FCC2d 457, 482 (1979) (notice of proposed rulemaking), the Commission reassured the public that "[e]fforts to promote minority ownership and EEO are underway and promise to bring about a more demographically representative radio industry." In adopting its ultimate rules in Deregulation of Radio, 84 FCC2d 968, 1036, recon. granted in part, 87 FCC2d 797 (1981) aff'd in pertinent part sub nom. Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413 (D.C. Cir. 1983), the Commission held that "it may well be that structural regulations such as minority ownership programs and EEO rules that specifically address the needs of these groups is preferable to conduct regulations that are inflexible and often unresponsive to the real wants and needs of the public." It explicitly concluded that the minority ownership policies and EEO rules, rather than direct regulation of broadcast content, were the preferable means to achieve diversification. Id. at 977.

See also Amendment of §73.636(a) of the Commission's Rules (Multiple Ownership of Television Stations), 75 FCC2d 587, 599 (1979) (separate statement of Chairman Ferris), aff'd sub nom. NAACP v. FCC, 682 F.2d 993 (D.C. Cir. 1982); Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments, Second Report and Order, 101 FCC2d 638, recon. denied, 59 Rad. Reg. 2d (P&F) 1221 (1985), aff'd sub nom. NBMC v. FCC, 822 F.2d 277 (2d Cir. 1987); Deletion of AM Acceptance Criteria in §73.37(e) of the Commission's Rules, 102 FCC2d 548, 558 (1985), recon denied, 4 FCC Rcd 5218 (1989); Nighttime Operations on Canadian, Mexican and Bahamian Clear Channels, 3 FCC Rcd 3597 (1988), recon. denied, 4 FCC Rcd 4711 (1989); cf. Revision of Radio Rules and Policies (Report and Order) (MM Docket 91-140), 7 FCC Rcd 2755, 2769-2770 ¶¶26-29 (1992) (relying on minority ownership policies to further diversification goals, even as the Commission deleted one of those policies, the Mickey Leland Rule.)

The courts have approved the Commission's reliance on minority ownership and EEO as preferred means of addressing diversification goals. NAACP v. FCC, supra, 682 F.2d at 1004 (D.C. Cir. 1982) (holding that the Commission "has not improperly exercised its discretion by relying on [its minority ownership, employment and programming policies] rather than the Top-Fifty Policy, to advance

compliance is the thin straw upon which the Commission relies to insure that listeners and viewers receive a diverse pallette of information.[4]

Yet as shown in Section III infra, the representation of minorities and women continue to be vastly underutilized in mass media and telecommunications industries. The Commission's EEO enforcement program is not working. It needs a top to bottom strengthening and reform. It no longer suffices to respond to deliberate noncompliance with trivial fines. See Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993) (Commission must reassess previous regulatory policies and the assumptions underlying them in light of subsequent events and fundamentally changed circumstances).

Most important, the time has come to decide that a deliberate and substantial EEO violation, standing alone and even absent proof of overt discrimination or misrepresentation, may require a hearing.

Notwithstanding the relatively greater importance of EEO in its regulatory scheme, the Commission has treaded water in EEO enforcement for twelve years. There have been no major innovations, and no hearings except in the most outrageous cases.

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minority goals.")

[4] Under deregulation, if one station in a market is thought to be serving minorities, no other station in the market is required to do so, and other stations may elect to serve nonminorities exclusively. Id. at 991. This was a very dramatic change from the regulatory structure which had been in place for at least a generation. Compare En Banc Programming Inquiry, 44 FCC 2303, 2314 (1960) and Public Service Responsibility of Broadcast Licensees 15 (March 7, 1946) (the "Blue Book") (each station is expected to serve minority groups). Thus, one station's EEO compliance may have the effect of forcing an entire listener target group of nonminorities to do without an integrated, minority issue-sensitive staff at the station which has set out to meet their needs to the exclusion of the needs of others.

Progress has come largely as a result of court decisions striking down abysmal and indefensible Commission practices. See, eg., Beaumont NAACP v. FCC, 854 F.2d 501 (D.C. Cir. 1988) ("Beaumont") (the Commission must hold a hearing when a licensee offers conflicting sets of explanations for the departures of most of its stations' minority employees); NBMC v. FCC, 775 F2d. 342 (D.C. Cir. 1985) ("NBMC") (the Commission must investigate further when a licensee ignored the EEO Rule over two consecutive license terms; the Commission cannot consider post-term EEO improvements when the license term record reflected systematic noncompliance).